

## **V. DOE ORDERs and ARARs**

# Overview

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- Background
- Private versus Public Regulation
- DOE Orders
- DEAR
- Orders as ARARs
- NRC Regulations and Orders

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# Background/Legislation

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- The Atomic Energy Act of 1954
- Department of Energy Organization Act of 1977

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# Legislation Created Two Federal Agencies

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- Nuclear Regulatory Commission
  - Private nuclear materials
  - Regulations
- Department of Energy
  - Federal nuclear materials
  - Regulations
  - Orders

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# Issuing Policy

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- Policy Statements
  - ➡ Describe philosophies of the Department
- Regulations
  - ➡ Enforceable requirements
- Orders
  - ➡ Establish objectives, requirements, and responsibilities
- Notices
  - ➡ Like Orders, but more immediate
- Manuals
  - ➡ Supplement orders

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# Department of Energy Acquisition

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- DEAR (48 CFR 9)
  - ➡ DEAR (48 CFR 9).
- Contract management
  - ➡ *Applies to all DOE acquisitions of supplies and services*
- Comply with DOE Orders - 5400.1

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# Implementation of DOE Orders

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- Contractor-driven organization
- Comply with Orders in contract
- Oversight by DOE

# DOE Orders

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- Not promulgated
- Contractually binding (promulgated)
- It's the law



# External Regulation

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- Self-regulating
- External regulation
  - Environmental Management
  - Transitional stage

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# Environmental Policy

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- DOE Order 5400.1
  - ➡ DOE is firmly committed ... to environmental protection goals.
  - ➡ *DOE policy to conduct the Department's operations in compliance with the letter and spirit of applicable environmental statutes, regulations, and standards. (page 6)*
- Federal Facility Agreements
- Environmental Laws - both federal and state
  - ➡ ARARs compliance

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# Orders versus ARARs

## A View from DOE

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- Round peg in a square hole
- Orders are not ARARs
  - ➡ CERCLA compliance with other laws manual (pages 5-17 and 5-18)
- Orders are not TBCs
  - ➡ March 29, 1993, memorandum
- DOE must comply with Orders

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# Orders as ARARs

## A View from EPA

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- Square peg in a round hole
- Orders are not ARARs
- Orders are TBCs
- Is the Order more instructive or more stringent or more prescriptive?
- Negotiate with EPA/state

# What are DOE Orders?

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- Orders are neither ARARs nor TBCs
- DOE must comply with Orders
- If the CERCLA process meets the requirement in the Order, then the Order as well is satisfied
- Orders included in RODs are enforceable
- When the Order is part of the signed ROD, the Order cannot be waived using DOE procedures

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# Orders and NRC Regulations

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- NRC cannot regulate DOE (AEA)
- DOE cannot regulate NRC
- Disposal of high-level nuclear waste - NRC regulates DOE

# Orders and NRC Regulations

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- Can use NRC regulations when they are more prescriptive than the DOE Order
- NRC regulations can only be relevant and appropriate
- Must complete requirements in the Order

# Summary

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- DOE Orders are not ARARs
- DOE must complete the requirements in the Order
- Order included in RODs are enforceable
- NRC requirements can only be relevant and appropriate
- Can use NRC regulations as relevant and appropriate when they are more prescriptive

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